IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.4709 OF 2001

Shri B.R. Dharmik
Joint Manager (General)
Zonal Office, Mumbai ... Petitioner

V/s.

1. Food Corporation of India
16-20, Barakhamba Lane,
New Delhi - 1

2. The Managing Director
Food Corporation of India
16-20, Barakhamba Lane,
New Delhi-1

3. The Chairman, F.C.I., 16-20
Barakhamba Lane, New Delhi - 1 ... Respondents

Mr.S.P. Kanuga with Ms.S.N. Nath for Petitioner
Mrs.U.K. Shrivastav i/b M/s.Consulta Juris for
Respondent Nos.1 to 3

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, J.

DATED: **MARCH 2, 2005**

ORAL JUDGMENT (PER MHATRE, J.):

. By this Petition, the Petitioner, who was employed as Joint Manager of the Food Corporation of India, challenges the order dated 15.3.2001 and the order dated 8.8.2001 in appeal, holding that he had refused to comply with lawful orders and thereby had committed a willful act of insubordination and disobedience. A punishment of reduction in pay for the period not exceeding three years with cumulative effect has been imposed on the Petitioner besides an order for

recovery of Rs.3,88,735.25 from him.

2. The facts giving rise to the present Petition are as follows:

During the period from April 1979 to May 1984, M/s.Goa Flour Mill was purchasing wheat from the District Manager, Pune of the Respondent-Food Corporation of India under a particular scheme. During this period, it appears that M/s.Goa Flour Mill had claimed reimbursement of charges for transportation of wheat. These charges were reimbursed by the District Manager of the Food Corporation of India, Pune from time to time. It was noticed some time in the year 1984 during the audit that an excess amount had been paid to M/s.Goa Flour Mill as reimbursement. Accordingly, the District Manager, Pune issued a notice of recovery to M/s.Goa Flour Mill on 10.9.1985 which was challenged by the Mill in a Suit. It appears that during the period from July 1986 to October 1987 an amount of Rs.2,08,224/- was recovered from M/s.Goa Flour Mill. The suit was filed by the Mill before a Court in Pune for illegally adjusting reimbursement of transportation charges. During this entire period, the Petitioner was posted in Chandigarh.

3. On 26.9.2000, a chargesheet was issued against the Petitioner who was the District Manager, Pune at

that point of time for not filing legal proceedings against M/s.Goa Flour Mill and for not recovering the excess amount from the purchase price of the wheat. The Petitioner was charged for breach of the provisions of Regulations 31 and 32 of the Food Corporation of India Staff Regulations, 1971 having committed willful disobedience of a lawful and reasonable order. The Petitioner replied to the chargesheet and denied that he had committed any act of misconduct. The Petitioner pointed out in his reply that he was posted in Chandigarh when the District Manager, Pune had made excess payment during the period from 1979 to 1984 and he was posted in Goa as District Manager on 21.8.1987. The Petitioner also contended in his reply that he was being made a scapegoat for the irregularities which had been committed during the period from 1979 to 1984 when he was not posted in Pune. The Petitioner also pointed out that the chargesheet was issued and the proceedings were initiated after a lapse of 14 years, malafide, and undertaken solely with a view to deprive the Petitioner from being promoted.

4. An enquiry was held and the order of punishment was passed against the Petitioner on 15.3.2001. The Petitioner was punished by reduction in pay for a period not exceeding three years with cumulative effect. The Petitioner was also required to pay an amount of

Rs.3,88,735.25 to the Food Corporation of India. According to the order of punishment, it was due to the Petitioner's disobedience in recovering the excess amount paid to M/s.Goa Flour Mill while he was posted as District Manager, Goa, during the period 1986 to 1991, that the management of Food Corporation of India had suffered a loss. The order was confirmed in appeal. The petitioner has challenged both the order of the disciplinary authority as well as the appellate authority.

5. The main submission of Mr.Kanuga on behalf of the Petitioner is that the chargesheet issued was for an incident which allegedly occurred 14 years earlier and, therefore, the charge itself was stale. He relies on the judgment in the case of *State of Madhya Pradesh v/s. Bani Singh,* **AIR 1990 SC 1308** to submit that the disciplinary proceedings initiated against an employee after such a long lapse of time are liable to be quashed. He further submits that there was no disobedience of any lawful or reasonable order on the part of the Petitioner and therefore, he had not committed any misconduct as alleged. According to the learned Advocate, the Food Corporation of India had decided to file a counter claim for recovery of excess payment in the suit filed by M/s.Goa Flour Mill and had accordingly instructed the Government Pleader to file

such a claim. He submits that even according to the Law Officer of the Food Corporation of India, the recovery of the amounts from the purchase price of the wheat was not permissible in law. He also urges that the Petitioner has been made a scapegoat in order to fix the responsibility of some other officer for the excess payment made, although the Petitioner was not posted in Pune during the relevant period.

6. Ms.Srivastav, learned Counsel appearing for respondent-Corporation, submits that under the Food Corporation of India Staff Regulations, an employee is expected to comply with or obey all lawful orders and directions which may from time to time be issued to him in the course of his official duties by any person to whom he is subordinate in service of the Corporation. According to her, the Petitioner had flouted the Regulation 31D by not filing the counter claim in the suit filed by M/s.Goa Flour Mill, as directed. She further submits that the term "misconduct" has been defined in Regulation 32A. Clause 6 of this Regulation is in respect of willful insubordination or disobedience whether or not in combination with others of any lawful and reasonable order of the superiors of a delinquent employee. She urges that there can be no doubt that the Petitioner had flouted the Regulations and had committed a misconduct by not filing the counter claim and

ensuring recovery of the excess amount paid to M/s.Goa Flour Mill. She submits that failure to file a counter claim within time has resulted in the same being dismissed as barred by limitation. The misconduct according to her was one which attracted a minor penalty under Regulation 60 and therefore, there was no need for interference by this Court in its writ jurisdiction with the order of the disciplinary authority or the appellate authority. She relies on the judgement in the case of *Food Corporation of India v/s. A.Prahalada Road,* **(2001) 1 SCC 165.**

7. Having heard the learned Counsel for the parties, we are satisfied that the action taken against the Petitioner after a long lapse of 14 years cannot be permitted to be sustained and must be quashed. As held by the Apex Court in the case of State of Madhya Pradesh (supra) that if there is no satisfactory explanation for the inordinate delay in issuing a chargesheet to the delinquent employee, the disciplinary proceedings initiated after a long lapse of time are liable to be quashed. In the present case, there is no explanation as to why, if indeed the Petitioner had committed some misconduct, it was not possible to initiate departmental proceedings against him earlier. There is nothing on record to indicate as to why no action was initiated against the Petitioner although it was found in the year

1987 itself that excess payment had been made to M/s.Goa Flour Mill.

8. Apart from this, the directions given to the Petitioner to recover the amount from M/s.Goa Flour Mill appear to be unreasonable and unlawful order. When the Law Officer of the Food Corporation of India had opined that it was not possible to adjust the excess amount paid against the cost of the wheat, there was no question of the Petitioner having disobeyed any lawful order. Furthermore, the Petitioner was posted in Chandigarh when the alleged lapses occurred and excess payment was made to M/s.Goa Flour Mill. This was realised in 1985 itself during the audit. However, no immediate action was taken. By the time the Petitioner was directed to take action to recover any amount, M/s.Goa Flour Mill had already filed a suit and had obtained an order of injunction against the Food Corporation of India for recovery of the amount. In these circumstances, it would have amounted to disregarding the orders of the Court, had any amount had been deducted.

9. In such circumstances, we are of the view that the proceedings initiated against the Petitioner after a long lapse of 14 years are liable to be quashed. Moreover, we do not believe that the Petitioner had

committed any act of misconduct as he had not disobeyed any lawful or reasonable order. The orders dated 15.3.2001 and 8.8.2001 are, therefore, set aside. Rule made absolute. No order as to costs.